



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

*Modified by
M-625 where
conflicts*

Honorable Claude Isbell
Secretary of State
Austin 11, Texas

Dear Sir:

Opinion No. 0-6582

Re: Secretary of State not authorized to submit proposed Constitutional amendments for publication to owner of newspaper who is also legislator, in view of Section 18, Art. 3, Constitution of Texas. This prohibition also applies to corporation newspaper, in which legislator is a stockholder.

We have received your recent request for an opinion of this department, quoted as follows:

"Section 18 of Article #3 of the Constitution of Texas provides in the last sentence of that section the following:

"Nor shall any member of the Legislature be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected."

"In view of the above would this office be authorized to submit constitutional amendments passed during this session of the Legislature to those newspapers for publication that are owned and operated by a person who is a member of this session of the Legislature? Also, would a newspaper be prohibited from publishing such amendments by reason of the fact that a member of the Legislature at which these amendments were submitted might own stock in such newspaper? . . ."

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Section 1 of Article 17 of the Texas Constitution provides that such "proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the Legislature, in one weekly newspaper of each county, in which such a newspaper may be published."

Heretofore the cost of this type of publication has been paid from appropriations made by the Legislature for that specific purpose. We assume the Forty-ninth Legislature will make a similar appropriation to pay the costs of publishing the amendments proposed by them at this session.

In 1922 Opinion No. 2411 was approved and released from this office by the late Honorable W. A. Keeling, who then was Attorney General of Texas. We quote from said opinion as follows:

" . . . A person who was a member of the Legislature at the time of the enactment of what is known as the State Highway Commission Law could not lawfully make a contract with a county for road construction work involving funds awarded to such county by the State Highway Commission. We think also that a person who was a member of the State Senate at the time of the enactment of the law appropriating registration fees to the State Highway Commission could not lawfully contract with a county where funds appropriated by such act are to be expended. An appropriation act is, of course, a law. See Section 6, Article 8, State Constitution. County contracts of the kind here under consideration could not be made if the statute creating the State Highway Commission and providing for automobile registration fees had not been enacted. Neither could such contracts be made unless the Legislature had appropriated the State Highway Funds. We think it clear, therefore, that a contract of this kind is to be considered as having been 'authorized' by the State Highway Commission, statutes and the appropriation act above referred to."

Therefore, it is our opinion that a contract between the State of Texas and a member of the Legislature for the publishing by such member of the Legislature of such proposed constitutional amendments is prohibited by said Section 18 of Article 3 of the Constitution of Texas, for the reason that the payment to a Legislator-publisher for services rendered under such contract should be by authority of an appropriation law passed during the term in which such Legislator-publisher shall have been elected to the Legislature.

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Furthermore it is our opinion that said Section 18 of Article 3 of the Constitution of Texas also prohibits a contract between the State of Texas and a corporation in which a member of the Legislature holds stock, for the purposes herein proposed, because of the principles of law expressed in the following authorities:

In Volume 10, Tex. Jur., pp. 781-782 appears the following:

"Certainly there is ample authority for the view that the stockholders have a beneficial interest in the corporate property. As has been well said, the interest of a stockholder in the capital fund 'has the characteristics of: (a) indirection; (b) subordination to that of the creditors; and (c) sequent contingency of realization in the form of profits or return of (or reimbursement for) his contribution.'" (Underscoring added for emphasis)

In the case of *Hobbs, Wall & Co. v. Moran*, District Court of Appeals, Third District, California, 293 Pac. 145, the purchase of supplies for a city from a corporation, the manager of which was also City Councilman, was illegal because the Councilman was "indirectly interested" in view of a statute prohibiting an officer of the city from being interested, directly or indirectly, in any contract with such city. We quote from said case as follows:

"When it appears that an officer is substantially benefited, financially or otherwise, by his participation in a contract with the municipality which he represents, the transaction is invariably declared to be illegal. Under such circumstances, in its effort to uphold the transaction, a court will not resort to fine distinctions in order to determine just what facts will constitute an 'indirect interest' on the part of the officer." (Underscoring added for emphasis)

In view of the foregoing, we do not believe the Secretary of State to be authorized to submit for publication constitutional amendments proposed at this session of the Legislature to these newspapers that are owned and operated by, or, if a corporation, in which stock is held by, a person who is a member

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of this session of the Legislature.

We herewith enclose a copy of said Opinion No. 2411.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 23, 1945
Robert L. Lattimore Jr.

ATTORNEY GENERAL OF TEXAS

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RLL/JCP
Enclosure-1

